

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F204555

JOHNNY DAVIDSON, EMPLOYEE	CLAIMANT
WHITEYS TRUCK CENTER, INC., EMPLOYER	RESPONDENT
UNION STANDARD INSURANCE, CARRIER	RESPONDENT

OPINION FILED JULY 30, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on June 30, 2004 at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE ROBERT B. BUCKALEW, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE ANDY CALDWELL, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was conducted to determine if this claim should be dismissed when the claimant's attorney has lost contact with his client and accrued benefits are owed.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I hereby grant the respondents' Motion to Dismiss for failure to prosecute.

STATEMENT OF THE CASE

The claimant sustained a scheduled left hand injury on April 10, 2002, which the respondents accepted as compensable. Medical expenses were paid.

The claimant hired counsel and filed an AR-C on August 2, 2002. Three months later, in November, 2002 the Attorneys negotiated a proposed joint petition settlement for a total of \$5,250.00 (with \$4,509.12 allotted to cover permanent impairment) and an attorney's fee of

\$1,317.50.

Attorney Buckalew explained that the settlement was based on a 16% anatomical impairment rating. The Commission's file contains no medical records to show the date or amount of the rating or even the diagnosis. The AIA-1 form shows a crushed hand injury but Mr. Buckalew advised the Commission that the claimant lost two fingers. Neither party offered any explanation why permanent partial disability benefits were not automatically initiated after the rating was issued. Neither party explained why the rating was used as the basis of impairment when amputations are calculated using Commission Rule 12. Using the Commission's tables, there is no need to wait for the doctor's opinion. Impairment is determined visually based on the phalanges lost in the accident.

At any rate, once the settlement was filed with the Commission and a hearing date was set, Mr. Buckalew found that he had lost contact with his client. An investigator's efforts to locate the claimant through his family and friends has been unsuccessful.

Attorney Buckalew has not heard from his client for two years. The respondents moved to dismiss this case pursuant to Ark. Code Ann. §11-9-702(a)(4). Mr. Buckalew filed an objection and requested a hearing.

Mr. Buckalew argues that his client is owed accrued permanent partial disability benefits. Mr. Buckalew does not want to take responsibility for the monies because he doesn't know if his client will ever return. He described the claimant as homeless or transient. Mr. Buckalew is asking the Commission to order the carrier to place the benefits in trust for seven years until the claimant can be adjudicated legally dead. He offered no authority (statutes, case law, rules) in support of his argument. When asked at what point a claimant waives his rights, Mr. Buckalew had no response.

Attorney Caldwell acknowledges that the carrier owes the claimant some permanent partial disability benefits, but he argues that this case is no different than any other file where the claimant doesn't pursue his claim. The respondents ask that this claim be dismissed pursuant to Ark. Code Ann. §11-9-702(a)(4).

FINDINGS AND CONCLUSIONS

Mr. Buckalew argued that this situation is analogous to a death case. However, it should be noted that death benefits are specifically regulated by Ark. Code Ann. §11-9-704(e). In those cases, there are parties (dependents, guardian, executors) actively pursuing the claim before the Commission and ready to take possession of the monies. Odom v. Tosco Corp., 12 Ark. App. 196, 672 S.W.2d 915 (1984); Zuercher v. Emerson Electric Co., 31 Ark. App. 124, 789 S.W.2d 467 (1990); McCaa Chevrolet v. Bounds, 207 Ark. 1043, 183 S.W.2d 932 (1944).

In the past, the Commissioners have held that the Commission's Fiscal Officer may hold benefits in trust, Oliver, et al v. Ballentine Produce, D412419 (May 29, 1986). However, this case involved a situation where the carrier was trying to avoid controverting the case by depositing the money with the Commission while a decision was pending on the numerous possible dependents who had filed claims. Here again, though, there were recipients asking for the funds.

In this case, there is no moving party or designated recipient to pursue a hearing or a joint petition settlement. All reasonable efforts have been made to contact the claimant. Notice has been sent to the claimant's last known address. Efforts to locate him through friends and family have been unsuccessful. He has not tried to make contact with his attorney, the Commission, or the carrier in two years.

Under the circumstances, I find the claim should be dismissed without prejudice for failure to prosecute.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge